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ABSTRACT

Dress codes directed at gang attire present school officials with the dilemma of ensuring the safety of the students in a school environment versus the First Amendment rights of students to express themselves. A review of some of the court decisions limited to freedom of expression and general dress code cases serves as a foundation from which to discuss gang attire dress codes. The U.S. Supreme Court Case of "Tinker v. Des Moines 1969" is considered a landmark case in student freedom of expression. The courts have been divided in dress code cases and in their response to lawsuits over the right of students to wear hair at a length of their choosing. In southern California, many school boards have passed policies that specifically address gang attire. An examination of the actual policies of five intentionally unidentified school districts in southern California reveals policies that, because of their vagueness, may eventually lead a school district into court. Six guidelines for schools and districts to follow in establishing dress codes are provided. In addition, regarding association dress codes aimed directly at gang attire, districts are advised that the dress code should address those items of clothing that are not worn by the student population in general, and reference to specific professional sports teams clothing should not be included. (Contains 16 references.) (MLF)

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School Dress Code Law in the 90's: Tinkering with Fashion and Gangs

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Gang Attire Dress Codes: School Safety or Violation of Student's Rights

Introduction

Dress codes directed at gang attire present school officials with questions of insuring the safety of the students in a school environment versus the First Amendment rights of students to express themselves. While the courts have stated the authority of school personnel to maintain a reasonable, safe atmosphere in which all students can be educated, the courts also have reinforced student civil rights.

Each local school board establishes policies regarding dress codes and school safety issues for its district and its schools. The volatility of these issues affects both students and parents. In establishing these policies, the responsibility to insure a proper learning environment is weighed against the individual rights of students.

The enactment of school board policies on these issues raises some questions for serious consideration. Does the implementation of a school dress code which specifically targets gang dress attire violate the rights of students, not just gang affiliated students, to express themselves? Have the rights of all been sacrificed for the disciplining of a few? This paper will address these questions.

Review of Court Cases

A lawsuit challenging the constitutionality of gang attire dress codes has yet to be filed. Thus, the court decisions upon which school officials must rely are limited to freedom of expression and general dress code cases. A review of some of those cases serves as a foundation from which to discuss gang attire dress codes.

Tinker v. Des Moines

The U.S. Supreme Court Case of Tinker v. Des Moines (1969) is considered a landmark case in education law due to its freedom of expression ruling on behalf of students. Most education law specialists refer to this case in expressing the right of students to express themselves. The Supreme Court made it quite clear that students did not lose their constitutional rights when they entered the doors of the school. School officials could no longer discipline students symbolic expression of opinion unless they could show that there would be material interference with, or substantial disruption of, the school's routine.

Hair Length Cases

The courts have been divided in their response to lawsuits over the right of students to wear hair at a length of their choosing. For instance, the right to wear one's hair at a length satisfying the student cannot be found in the meaning of the Constitution according to the decision rendered in *Karr v. Schmidt (1972)*. The districts' rights included that of governing student dress as well as hair length and conduct according to decision rendered in the *King v. Saddleback* (445 F. 2d 932 (1971) and the *Olff v. Eastside Union* (U.S. App. 305 F. Supp. 557 (1969) cases. An opposing view was expressed in *Massie v. Henry (1972)* when the court ruled that the school carried the burden of establishing the need to infringe upon a student's freedom in setting hair length policies. Likewise, in *Breen v. Kahl (1969)*, the right of students to wear their hair at any length or in any manner was declared an ingredient of personal freedom protected by the Constitution.

Dress Code Cases

The courts' rulings have been inconsistent once again. In *Scott v. Board of Education, Union Free School District #17 (1969)*, girls were prohibited from wearing slacks to school because it was considered only an issue of taste and style, not of safety, order or discipline. In *Bannister v. Paradis (1970)*, the court ruled it was unconstitutional to prohibit students from wearing dungarees since wearing them did not pose a danger to the health and safety of others and did not cause a disturbance or incite disciplinary problems. However, if attire is immodest such as short skirts more than six inches above the knees, the courts have ruled that a school can prohibit students from wearing such clothing (*Wallace v. Ford*, 1972).

In *Olesen v. board of Education of School District No. 228 (1987)*, a dress code prohibiting male students from wearing earrings was ruled constitutional. Part of the rationale for this decision rested on the ability of the school district to establish a rationale for the policy. The rationale was that the policy was related to the goal of curbing gang activity in and around the schools.

Safe Schools

The California Department of Justice in their publication Law in the Schools states that teachers and administrators must enforce school rules and the law in order to control and eliminate harmful behavior. It goes on to say that "student violators must receive consistent consequences via school discipline measures... (p. 19)"

The federal courts have upheld the school district's rights to establish regulations for the day-to-day operations of its schools. The safety issue is

addressed in stating that school officials have the right to demand conduct that is conducive to the fulfillment of its responsibility to educate (Students' Rights and Responsibilities Handbook, 1986)"

However, the courts are not clear in giving administrators the authority to control the school environment to protect all students and to protect themselves from litigation. In 1988, the court found in the Ledger v. Stockton Unified School District case that the California Constitution is not self-executing because it does not supply a right to sue for damages. It expresses a general right without giving any specific rules of enforcement. On the other hand, the California Supreme Court ruled in *Totsiello v. Oakland Unified School District (1972)* that the law imposes on school authorities a duty to supervise the conduct of children necessary to their protection because of the tendency of students to participate in aggressive and impulsive behavior imposes on school authorities a duty to

Gang Association Cases

The issue of association revolves around the issue of gang activity and the dress that gangs wear to identify themselves. The rationale for addressing the issue of association rests with the concern that all activities that endanger students on the way to, while at, and on the way home from school be eliminated. Therefore, if a student's manner of dress has the potential of causing violence on campus, that clothing must be eliminated. A clear example of this responsibility was demonstrated in *Boggers v. Sacramento City Unified School District (1972)* where a high school student was attacked by a group of gang members and seriously injured. The court found that the school was liable for damages because it was aware of the gang problem and had neglected to take any action to protect

the students, the least of which would be to restrict outward displays of gang affiliations.

School District Dress Code Policies

The issue of association and gang attire clothing becomes confusing when reviewing school board policies. In southern California, many school boards have passed policies which specifically address gang attire clothing. Some of those policies address the issue by stating that certain styles of clothing are not permissible. However, some school districts have gone beyond this limit by specifically naming certain professional sports team clothing as being impermissible because gangs identify themselves with it. The question then becomes: is it constitutional to outlaw specific organizational clothing? Some school districts have chosen to bypass the issue by declaring all sports organization related clothing impermissible. An examination of the actual policies of some school districts in southern California reveals how the districts are addressing the issue. The identity of the school districts is intentionally not revealed.

School District A

The district's dress policy states:

> The school district's Board of Education is legally and ethically responsible for the establishment of classroom and campus environments that are conducive to an orderly and productive educational program. The minimum standards for dress and grooming set forth in this policy meet this responsibility in the schools of the school district.

...The following minimum standards shall be enforced in the school district in order to meet the requirements of the California Administrative Code regarding grooming, dress, appearance; and the Education Code regarding free expression:

1. Any clothing makeup, hairstyle or wig that contributes to the substantial disruption of the orderly operation of the school is unacceptable/inappropriate for school attire.
4. Apparel with emblems, printing, etc., that is obscene, libelous, or slanderous, or that incite students as to create a clear and present danger are not permitted on campus and may not be worn.

School District B

The school district addressed gang attire dress and association by these policies:

I. The Board of Education feels that there is nothing inherently wrong with dress or color of dress, but when students' dress serves to intimidate or impede the rights of other students it will be determined that dress is in violation of this policy.

B. 6. Identified gang attire such an bandannas, hairnets or hairrollers, or any gang paraphernalia are prohibited.

School District C

In their board policy, "Disruptions to the Learning Process by Students", the school district addresses the issue of gang colors by stating:

> II. A. 2. Identified Groups of Students
>
> Includes those students engaged in negative activity, behavior, or display which when evaluated collectively, could denote student group affiliation which threatens the safe and orderly school environment.
>
> a. "Colors"
>
> The term "colors" is defined as a display by the wearing or placement of apparel by a group of students, or an individual student, which would signify the affiliation or intent of affiliation in a student group advocating or participating in disruptive behavior.

School District D

In the "Dress and Appearance Regulations", the school district responded to gang attire by stating:

> In recognition of the instructional responsibilities and goals of the school district, the district hereby adopts the following regulations relative to the dress and appearance of the students:
>
> 1. No gang-related jewelry, insignia, colors, paraphernalia, materials, apparel, clothing or attire may be worn or carried on campus or at school activities. Also prohibited are notebooks, manner of grooming, or gesture which, by virtue of its color,

arrangement, trademark, graffiti, or any other attribute, denotes membership in such a group.

2. Hats of any kind may not be worn on any campus during school hours. No gang-related hats or other gang related head attire may be worn on campus or at school activities.

7. Gang-related clothing, apparel, attire, jewelry, insignias, colors, paraphernalia and materials may vary from school to school, and may change from year to year. consequently, prior to disallowing the wearing or display of the aforementioned articles or things, the procedures outlined below shall be strictly adhered to by the principal or the principal's designee.

School District E

In Board Policy No. 5220, the school district addresses gang attire with a resolution:

RESOLUTION RELATING TO GANG COLORS/DISTINCTIVE DRESS

WHEREAS street gangs operating throughout Southern California have been associated with a number of instances of violence and illegal activities, and

WHEREAS many students and their parents fear that the presence of such gangs on a school campus may cause violence endangering students who may or may not be members of such gangs, and

WHEREAS jackets, bandannas, caps, and other signs and insignia of gang membership disrupt campus order by engendering fear and posing a potential for violence in the form of intergang warfare.

THEREFORE BE IT RESOLVED that the Board of Education finds the wearing of gang signs, insignia, and distinctive modes of dress to be on its face a violation of its policy on Improper Dress for Students and hereby instructs and directs such gang identification be prohibited on any and all campuses of the District.

In implementing this policy, the local school sites have enlarged on the policy. Instances of these individualized policies at middle schools include:

School 1 The following clothing may not be worn: British Knights shoes or clothing . . .

School 2 No hats, Raider's/King's apparel.

School 3 Not allowed: hats, dark glasses, Raider's/King's apparel, B.K. tennis shoes

Constitutional Concerns

Admittedly, there is a genuine, realistic concern for the safety of students on our school campuses. There is no denial that gang activity and being associated with gangs has resulted in disruptions on school campuses including the deaths of students.

The question is at what price of students' constitutional rights do school districts implement gang attire dress codes that restrict clothing choices. The policies listed above are highly vague in their interpretation. When the individual schools develop policies that mention sports teams by name, have the rights of students been further restricted?

The vagueness of the policies is such that any article of clothing could conceivably be ruled gang attire by school officials. The prohibition against the

wearing of "colors" could lead school officials to ban certain colors at the school such as reds and blues which represent two of the largest gangs in Southern California, the Crips and the Bloods. But does the wearing of dress with red or blue on it automatically signify that the student is a gang member?

Where is the students' right to dress according to the clothing available to them constitutionally protected? For low socio-economic students, does the banning of certain clothes interfere with their right to seek an education in that they do not have the financial resources to buy new clothes at the district's decision to ban "colors" or certain types of apparel?

The vagueness of the policies may eventually lead a school district into court. The school district will then have to shoulder the burden of proving that the policy on gang attire dress code does not discriminate against students and does indeed provide for a safe school environment.

Guidelines

In approving policies regarding student dress, school officials must show a connection between the appearance and the negative behavior or distraction from the educational function of the school. To dislike how someone looks is not enough. Is there a distraction?

General guidelines for schools and districts to follow in establishing dress codes, especially gang attire dress codes, should be able to withstand judicial scrutiny as outlined by Gee and Sperry (1978):

1. When promulgating dress and grooming standards, school boards should be able to establish through expert opinion and actual experience a necessary nexus between the regulations and maintenance of school

discipline and prevention of interference with the education environment. Likewise, school boards should be able to demonstrate what health or safety threats are being prevented by grooming standards designed to avoid such danger.

2. School dress and grooming standards must not be couched in language that is vague, broad, or imprecise.
3. Procedures leading to the adoption of a dress and grooming code should meet standards of fundamental fairness, allowing affected parties an opportunity to be heard.
4. The implementation and enforcement of dress and grooming standards should be uniformly applied to all individuals with the purview of the regulations.
5. Grooming standards that are more narrowly drawn to cover specific activities, such as participation in band or athletic events, will generally withstand judicial scrutiny.
6. Finally, minimum due process procedures must be provided to students when they are threatened with suspension or dismissal for violating dress and grooming standards.

Perhaps two additional guidelines regarding association dress codes aimed directly at gang attire need to be articulated according to Lane and Stine (1992):

1. The dress code should address those items of clothing that are not worn by the student population in general.

2. Reference to specific professional sports teams clothing such as the Los Angeles Raiders and the Los Angeles Kings should not be included in the dress codes.

School officials must not judge students on their appearances alone. Policies developed to deal with gang activity must not be vague. The rights of students overall cannot be restricted due to the behavior of a few. The fine line between protecting students' rights and implementing policies to ensure a safe school is a distinction which school officials must make.

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